

§ 1075.103

provides pursuant to paragraph (c)(1) of this section.

(d) *Unavailability of the Fund Administrator.* If there is no Fund Administrator or if the Fund Administrator is otherwise unavailable, the Chief Financial Officer will perform the functions and duties of the Fund Administrator.

§ 1075.103 Eligible victims.

A victim is eligible for payment from the Civil Penalty Fund if a final order in a Bureau enforcement action imposed a civil penalty for the violation or violations that harmed the victim.

§ 1075.104 Payments to victims.

(a) *In general.* The Bureau will use funds in the Civil Penalty Fund for payments to compensate eligible victims' uncompensated harm, as described in to paragraph (b) of this section.

(b) *Victims' uncompensated harm.* (1) A victim's uncompensated harm is the victim's compensable harm, as described in paragraph (c) of this section, minus any compensation for that harm that the victim has received or is reasonably expected to receive.

(2) For purposes of paragraph (b)(1) of this section, a victim has received or is reasonably expected to receive compensation in the amount of:

(i) Any Civil Penalty Fund payment that the victim has previously received or will receive as a result of a previous allocation from the Civil Penalty Fund to the victim's class;

(ii) Any redress that a final order in a Bureau enforcement action orders to be distributed, credited, or otherwise paid to the victim, and that has not been suspended or waived and that the Chief Financial Officer has not determined to be uncollectible; and

(iii) Any other redress that the Bureau knows that has been distributed, credited, or otherwise paid to the victim, or has been paid to an intermediary for distribution to the victim, to the extent that:

(A) That redress compensates the victim for the same harm as would be compensated by a Civil Penalty Fund payment; and

(B) It is not unduly burdensome, in light of the amounts at stake, to determine the amount of that redress or the

12 CFR Ch. X (1–1–14 Edition)

extent to which it compensates the victim for the same harm as would be compensated by a Civil Penalty Fund payment.

(3) If the Fund Administrator deems it impracticable to assess the uncompensated harm of individual victims in a class, each individual victim's uncompensated harm will be the victim's share of the aggregate uncompensated harm of the victim's class.

(c) *Victims' compensable harm.* Victims' compensable harm for purposes of this part is as follows:

(1) If a final order in a Bureau enforcement action ordered redress for a class of victims, the compensable harm of each victim in the class is equal to that victim's share of the total redress ordered, including any amounts that are suspended or waived.

(2) If a final order in a Bureau enforcement action does not order redress for a class of victims, those victims' compensable harm is as follows:

(i) If the Bureau sought redress for a class of victims but a court or administrative tribunal denied that request for redress in the final order, the victims in that class have no compensable harm.

(ii) Except as provided in paragraph (c)(2)(i) of this section, if the final order in the Bureau enforcement action specifies the amount of the victims' harm, including by prescribing a formula for calculating that harm, each victim's compensable harm is equal to that victim's share of the amount specified.

(iii) Except as provided in paragraph (c)(2)(i) of this section, if the final order in the Bureau enforcement action does not specify the amount of the victims' harm, each victim's compensable harm is equal to the victim's out-of-pocket losses that resulted from the violation or violations for which a civil penalty was imposed, except to the extent such losses are impracticable to determine.

§ 1075.105 Allocating funds from the Civil Penalty Fund—in general.

(a) *In general.* The Fund Administrator will allocate Civil Penalty Fund funds specified in paragraph (c) of this section to classes of victims and to

Bur. of Consumer Financial Protection

§ 1075.106

consumer education and financial literacy programs as appropriate according to the schedule established in paragraph (b) of this section and the guidelines established in §§1075.106 and 1075.107.

(b) *Schedule for making allocations.* (1) Within 60 days of May 7, 2013, the Fund Administrator will establish, and publish on www.consumerfinance.gov, a schedule for allocating funds in the Civil Penalty Fund, in accordance with the following:

(i) The schedule will establish six-month periods and identify the start and end dates of those periods. The start date of one period will be the day immediately after the end date of the preceding period.

(ii) Notwithstanding paragraph (b)(1)(i) of this section, the first and second periods may be longer or shorter than six months to allow future six-month periods to start and end on dates that better serve administrative efficiency. The first and second periods will constitute “six-month periods” under this part regardless of their actual length.

(iii) The start date of the first period is July 21, 2011.

(2) Within 60 days after the end of a six-month period, the Fund Administrator will allocate available funds in the Civil Penalty Fund in accordance with §§1075.106 and 1075.107.

(3) If the Civil Penalty Fund Governance Board determines that the schedule established under paragraph (b)(1) of this section should be changed to better serve administrative efficiency, it may change that schedule by directing the Fund Administrator to publish the new schedule on www.consumerfinance.gov. Any new schedule must comply with paragraph (b)(1)(i) of this section. The first period of any new schedule may be shorter or longer than six months. That first period will constitute a “six-month period” under this part regardless of its actual length.

(c) *Funds available for allocation.* The funds available for allocation following the end of a six-month period are those funds that were in the Civil Penalty Fund on the end date of that six-month period, minus:

(1) Any funds already allocated,

(2) Any funds that the Fund Administrator determines are necessary for authorized administrative expenses, and

(3) Any funds collected pursuant to an order that has not yet become a final order.

§ 1075.106 Allocating funds to classes of victims.

(a) *Allocations when there are sufficient funds available to compensate all uncompensated harm.* If the funds available under §1075.105(c) are sufficient, the Fund Administrator will allocate to each class of victims the amount necessary to compensate fully the uncompensated harm, determined under §1075.104(b) as of the last day of the most recently concluded six-month period, of all victims in that class to whom it is practicable to make payments.

(b) *Allocations when there are insufficient funds available to compensate all uncompensated harm.* If the funds available under §1075.105(c) are not sufficient to make the allocations described in paragraph (a) of this section, the Fund Administrator will allocate the available funds to classes of victims as follows:

(1) *Priority to classes of victims from the most recent six-month period.* The Fund Administrator will first allocate funds to classes of victims from the most recently concluded six-month period, as determined under paragraph (b)(2) of this section. If funds remain after allocating to each class of victims from that six-month period the amount necessary to compensate fully the uncompensated harm, determined under §1075.104(b) as of the last day of the most recently concluded six-month period, of all victims in that class to whom it is practicable to make payments, the Fund Administrator next will allocate funds to classes of victims from the preceding six-month period, and so forth until no funds remain.

(2) *Assigning classes of victims to a six-month period.* For purposes of this paragraph (b), the Fund Administrator will assign each class of victims to the six-month period in which the victims first had uncompensated harm as described in §1075.104(b). When a class of victims